

**AUTHENTICATED
COPY**

INTRA-AGENCY AGREEMENT NO. 98-SLC-0357

BETWEEN

UNITED STATES DEPARTMENT OF ENERGY
ALBUQUERQUE OPERATIONS OFFICE

AND

UNITED STATES DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION
COLORADO RIVER STORAGE PROJECT CUSTOMER SERVICE CENTER

FOR

PROVISION OF ELECTRIC SERVICES

TO

KIRTLAND AIR FORCE BASE/SANDIA NATIONAL LABORATORIES

DE-AI04-99AL66005

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1. PREAMBLE

This Intra-agency Agreement (Agreement), made on this 26th day of April 19 99, pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), the Act of Congress approved April 11, 1956 (70 Stat. 105), the Department of Energy Organization Act, 42 U.S.C. §§ 7101 *et seq.*; the Economy Act, 31 U.S.C. § 1535 (1984), and acts amendatory or supplementary to the foregoing Acts, between the UNITED STATES OF AMERICA, acting by and through the Administrator, Western Area Power Administration, Colorado River Storage Project Customer Service Center, hereinafter called Western, represented by the officer executing this Agreement, a duly appointed successor, or a duly authorized representative, and THE DEPARTMENT OF ENERGY - ALBUQUERQUE OPERATIONS OFFICE, hereinafter called DOE-AL or Contractor, represented by the Contracting Officer executing this Agreement. Western and DOE-AL are each sometimes individually called Party and collectively called Parties.

WITNESS:

2. EXPLANATORY RECITALS

- 2.1 Western is a Federal Power Marketing Agency that sells electric power and energy to Federal Agencies and other customers located within its marketing area.
- 2.2 DOE-AL is responsible for the acquisition of electric power and energy for the Kirtland Air Force Base/Sandia National Laboratories (KAFB/SNL) located near Albuquerque, New Mexico.
- 2.3 Western currently sells approximately 4 MW of power under Interagency Agreement No. 87-SLC-0029 with the United States Department of Defense - Kirtland Air Force Base for use at KAFB/SNL. DOE-AL purchases the remainder of the KAFB/SNL power supply requirements from Public Service Company of New Mexico (PNM) under terms of an electric power and energy supply contract scheduled to expire on December 13, 1999.
- 2.4 Western has been requested by DOE-AL to sell to DOE-AL the power supply and ancillary services required to meet the KAFB/SNL electric power and energy supply needs beyond those now supplied by Western after its current contract with PNM expires.
- 2.5 Western is interested in providing these services to DOE-AL, and DOE-AL plans to acquire such services via an Intra-agency Acquisition Order, i.e., this Agreement, pursuant to Federal Acquisition Regulation (FAR) Subpart 17.5 -

Interagency Acquisitions Under the Economy Act.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the Parties hereto agree as follows:

3. ENERGY SUPPLY SERVICES

- 3.1 Western, under the terms and conditions specified herein, shall deliver firm electric power and energy supply services (Energy Supply) to KAFB/SNL at the Points of Delivery listed in Exhibit A attached hereto.
- 3.2 Quantities of Energy Supply to be delivered by Western to KAFB/SNL shall be as specified by DOE-AL pursuant to scheduling procedures to be agreed to by the Parties under Section 11 of this Agreement.
- 3.3 Energy Supply provided by Western may be from any source available to Western. However, prior to award of the initial Energy or Power supply contract, Western agrees to first obtain DOE-AL Contracting Officer's approval to enter into such a contract. The DOE-AL Contracting Officer, after coordination through DOE's Field Management representatives, will provide such an approval via a formal modification to Exhibit C this Agreement.
- 3.4 Western shall separately account for the costs incurred to acquire the Energy Supply that will be sold to DOE-AL under the terms of this Agreement.
- 3.5 The parties recognize that the potential exists for energy resources to be developed at KAFB/SNL. This Agreement does not preclude future generation developments at KAFB/SNL to be used either as additional sources of power for KAFB/SNL or marketed to third parties under separate arrangements.
- 3.6 The Parties agree to meet annually to review requirements and acquisition strategies for the ensuing three year period. Western shall not commit to purchases requiring commitments of one year or longer for resale to DOE-AL under this Agreement without the prior written concurrence of the DOE-AL Contracting Officer.

4. CONDITIONS PRECEDENT AND CONTRACT TERMINATION

- 4.1 If either of the Parties determines that legal, contractual or regulatory impediments will prevent performance of this Agreement or that it would be futile or otherwise wasteful to seek to overcome possible legal, contractual or regulatory impediments

said Party may terminate this Agreement upon 10 days written notice to the other Party.

- 4.2 The provision of Energy Supply provided for in Section 3 of this Agreement is contingent upon Western obtaining access to the required transmission services. Western shall not commit to purchase any energy for resale to DOE-AL prior to obtaining access to the required transmission services. If Western, after making a good faith effort, cannot obtain the transmission rights necessary to transmit the power to the Points of Delivery, either Party may terminate this Agreement without penalty or other obligation, except as provided in Section 4.4 below.
- 4.3 Participation in this Agreement may be terminated by either Party upon three-years written notification to the other Party.
- 4.4 Termination of this Agreement shall not relieve DOE-AL from the obligation to reimburse Western for any cost incurred by Western pursuant to this Agreement prior to or as a result of termination. Such costs shall not exceed the amount shown in Exhibit C without written authorization of the DOE-AL Contracting Officer. Any such costs at termination will be invoiced and paid under Interagency Agreement No. 87-SLC-0029.

5. TRANSMISSION SERVICES

- 5.1 Western shall be responsible for obtaining the transmission services and related ancillary services required to deliver the Energy Supply to the Points of Delivery. The transmission services may be provided by Western (i) on its own transmission system, (ii) through the purchase of transmission services from another utility, (iii) through the use of Western's transmission rights on another utility's transmission system, (iv) through use of DOE-AL's transmission rights on another utility's transmission system, or (v) through any combination of the above.
- 5.2 DOE-AL shall reimburse Western for all costs incurred by Western in transmitting the Energy Supply to the Points of Delivery.

6. PAYMENTS

- 6.1 DOE-AL will make arrangements for KAFB to reimburse Western for the actual cost (or estimated cost if the actual cost is not known) of entering into and administering the contract(s) placed by Western to acquire and deliver Energy Supply in fulfillment of this Agreement. Under the terms of Base Support Agreement No. DE-AI04-96AL89676 or any successor agreement(s) between

DOE-AL and KAFB, KAFB serves as the paying agent for off-site utility supply arrangements that DOE-AL contracts for on behalf of KAFB/SNL.

- 6.2 For services under Sections 3, 5, 7, and 9 hereunder Western will bill and KAFB will pay in accordance with Section 13, Billing and Payment, of Western's General Power Contract Provisions (see Section 13). Western shall submit monthly invoices and supporting detail to the addresses provided in Section 6.3. Supporting detail shall include, as a minimum, the Agreement and invoice number, a description of the transaction, the period covered by the transaction, the billing determinants, the calculated amount of each transaction, administrative charges, and the total amount of the invoice. Billing for these services will be separately identifiable and included on invoices for an existing Interagency Agreement No. 87-SLC-0029 between Western and The United States Department of Defense - Kirtland Air Force Base. KAFB representatives have agreed to this Payment arrangement as reflected in Amendment No. 5 to Interagency Agreement No. 87-SLC-0029, which is incorporated herein by reference.
- 6.3 Western shall submit the original copy of the monthly invoice and/or transfer documentation supporting detail to the following address:

Kirtland Air Force Base
1606 Air Base Wing/DEEV
ATTN: Clifford J. Richardson
877 CES/CEOEE
2050 Wyoming Blvd, SE
Kirtland AFB, NM 87117

Western shall also provide a copy to the following address:

U.S. Department of Energy
Albuquerque Operations Office
ATTN: Pete Otero/CPD
P.O. Box 5400
Albuquerque, NM 87185-5400

7. COMMUNICATION AND CONTROL FACILITIES

- 7.1 DOE-AL shall provide, or cause to be provided, such telemetering as may be necessary to enable Western to continuously control the transfer of power between its system and that of KAFB/SNL.

- 7.2 DOE-AL shall provide, or cause to be provided, such equipment and the installation thereof by Western identified in Exhibit B needed to transmit to Western's dispatching office once each hour the kilowatt-hour exchange.
- 7.3 DOE-AL shall provide, or cause to be provided, such communication channels between the Parties for carrying on the necessary transactions for operation of their systems in accordance with this Agreement.
- 7.4 DOE-AL shall provide, or cause to be provided, all remote terminal units (RTUs) and any other control or telemetering equipment on its system that is necessary for Western to monitor DOE-AL's Points of Delivery. Such RTUs shall be compatible and suitable for interface with the Supervisory Control and Data Acquisition (SCADA) system of Western. DOE-AL shall provide, or cause to be provided, all software and hardware additions at its Dispatch Center made necessary by the addition of the DOE-AL's RTUs.
- 7.5 Western will estimate and set forth in Exhibit B all communication equipment and related software and installation costs to be provided by DOE-AL pursuant to Sections 7.1, 7.2, 7.3, and 7.4. Actual expenditures shall not exceed the estimates set forth in Exhibits B and C without the prior authorization of the DOE-AL Contracting Officer.
- 7.6 For equipment and software additions as identified in Exhibit B made necessary by the communication requirements identified in this Section 7, Western may invoice, in advance or on a reimbursement basis, the amount shown in Exhibit B for these supplies on its next monthly bill separately identifiable and under Interagency Agreement No. 87-SLC-0029. If the amount shown in Exhibit B is insufficient to cover the cost of the equipment identified, the Parties agree to revise Exhibit B, subject to availability of appropriations, and Western may invoice such additional costs on its next monthly invoice separately identifiable and under Interagency Agreement No. 87-SLC-0029. At the conclusion of construction, any remaining funds will be separately identified and credited by Western against its next monthly invoice under Interagency Agreement No. 87-SLC-0029.

8. METERING

DOE-AL shall be responsible for supplying Western with the appropriate control area signals necessary to respond to DOE-AL's regulation requirements on a dynamic basis. However, if the signal is lost, then DOE-AL will, in accordance with the guidelines set forth in the Operating Procedures, supply Western with a regulation schedule number as required to respond to DOE-AL's Area Control Error. Metering procedures will be set

forth in the Operating Procedures identified in Section 11.0.

9. **PRICE FOR SERVICES**

- 9.1 The \$200,000 estimated price related to equipment installation and associated costs (i.e., for up-front study, preparation of competitive energy related acquisition documents, equipment selection, acquisition and installation as well as software modification) is as shown in Exhibit B. Such costs may be incurred prior to initiation of energy supply related services. DOE-AL acknowledges that Western will commence this activity at time of award of this Agreement.
- 9.2 The estimated annual cost of Transmission Services, Energy Supply Services, Transmission related Ancillary Services, Administrative Expenses and the \$200,000 equipment installation and associated costs (as specified in Section 9.1) that will be provided by Western under the terms of this Agreement is summarized in Exhibit C. The annual usage estimates shown in Exhibit C do not obligate the DOE-AL to make any minimum level of purchases. These estimated costs are provided solely for the purpose of projecting the Agreement's Total Estimated Price to permit the DOE-AL to seek sufficient appropriations (funding). None of the estimates of usage, rates, charges or other estimates shall be used for any other purposes. The DOE-AL is not obligated to expend these amounts; nor is Western obligated to charge the rates implied in these amounts.
- 9.3 Actual costs to be invoiced under this Agreement will be the costs incurred by Western for Energy Supply and related transmission services, plus Western's associated administrative expenses authorized pursuant to FAR Subpart 17.505(d), and will not require a modification to the Agreement unless the resulting costs are estimated to exceed the Total Estimated Price included in Exhibit C. Any official updated estimates of future requirements shall be furnished to Western when such estimates become available.

10. **TERM OF AGREEMENT**

- 10.1 This Agreement shall become effective when fully executed by the Parties, and subject to prior termination as otherwise provided herein, shall remain in effect until midnight, five (5) years from the Agreement's award date identified in Section 1.
- 10.2 Service under Section 3 of this agreement shall begin on December 14, 1999.
- 10.3 DOE-AL may unilaterally extend this Agreement, via formal modification to the

Agreement, by one additional five-year term. Therefore, the total term of this Agreement will not exceed ten (10) years. DOE-AL shall give Western notice of intent to extend the term of the Agreement at least one year prior to the scheduled conclusion date. The DOE-AL Contracting Officer, in providing such notice, shall identify the revised estimated requirements, if applicable, for the Agreement's years 6 through 10. The DOE-AL Contracting Officer shall coordinate with Western's contract representative any such change(s) to the estimated total price for purposes of seeking adequate appropriations, and modify Exhibit C accordingly.

11. OPERATING, SCHEDULING, ACCOUNTING, AND BILLING PROCEDURES

11.1 Written Operating, Scheduling, Accounting and Billing Procedures, hereinafter called Operating Procedures, shall be developed and agreed upon by the Parties prior to receipt of energy and transportation services to be provided under this Agreement. The Operating Procedures are intended to implement the terms of this Agreement but not to modify or amend it and are, therefore, subordinate to this Agreement.

11.2 In the event the Parties fail to reach agreement on the initial Operating Procedures or any revised Operating Procedures which Western determines to be necessary due to changes in this Agreement or the power system of either Party, Western will temporarily implement essential procedures until mutually acceptable Operating Procedures have been developed and executed by the Parties.

12. OTHER SERVICES

In the future the Parties may identify other related services that Western may provide to DOE-AL. These services and arrangements may be added by formal modification to this Agreement subject to availability of appropriations.

13. WESTERN'S GENERAL POWER CONTRACT PROVISIONS

13.1 Western's General Power Contract Provisions (GPCPs), effective July 10, 1998 and attached hereto, are hereby made a part of this Agreement the same as if they had been expressly set forth herein, Provided; that Provisions 3, 19 through 24, 27, 39 and 40 shall not be applicable hereto.

13.2 The Parties recognize that in the GPCPs, the term "the contract" refers to "Intra-agency Agreement No. 98-SLC-0357."

14. EXHIBITS

Inasmuch as certain provisions of this Agreement may change during the term hereof, they will be set forth in exhibits from time to time agreed upon by the Parties. The initial Exhibits A, B and C, and all future exhibits shall be attached hereto and made a part hereof, and each shall be in force and effect in accordance with its terms unless superseded by a subsequent exhibit or by modification of this Agreement.

15. NOTICES

15.1 Any notice required by this Agreement shall be given in writing to the Parties designated below:

Western: Dave Sabo
CRSP Manager
Western Area Power Administration
P.O. Box 11610
Salt Lake City, UT 84147-0606
Telephone: (801) 524-6372
Fax: (801) 524-5017
E-mail: sabo@wapa.gov

DOE-AL U.S. Department of Energy
Albuquerque Operations Office
Contracts and Procurement Division
P.O. Box 5400
Albuquerque, NM 87185
Attn: Michael G. Loera, Contracting Officer
Telephone (505) 845-4302
Fax: (505) 845-4004
E-mail mloera@doeal.gov

or

U.S. Department of Energy
Albuquerque Operations Office
Contracts and Procurement Division
P.O. Box 5400
Albuquerque, NM 87185
Attn: Pete Otero, Electrical Engineer
Telephone (505) 845-6026

Fax: (505) 845-4210
E-mail potero@doeal.gov

15.2 A Party may at any time, by written notice, change the designation, address, E-mail address or telecopier number of the person(s) specified.

15.3 Notices shall be effective:

- (1) When delivered personally to any Party, or
- (2) Three (3) business days after a properly addressed notice is deposited, postage fully prepaid, registered or certified, in an official receptacle of the United States Postal Service, or
- (3) Upon confirmation of receipt, if electronically communicated by electronic mail (E-mail) or telecopier, Provided, that the receipt of E-mail or telecopier communication is confirmed by the other Party in writing or by return E-mail or telecopier message.

16. APPROPRIATIONS

16.1 Funds Citation. Services to be performed or provided under this Agreement during this current fiscal year shall be paid from current KAFB appropriations and in accordance with Base Support Agreement No. DE-AI04-96AL89676. KAFB representatives have certified that \$200,000 of funds have been set aside to fund the Exhibit B activities of this Agreement, and have certified that funds needed to pay for Energy, Transmission, Transmission related Ancillary Services, and Administrative Expenses, for this initial term will be budgeted and allocated accordingly, subject to receipt of appropriate appropriations.

16.2 Contingent Upon Appropriations. Services to be performed or provided under this Agreement extend beyond the current fiscal year. Therefore, the Parties recognize continued expenditure by Western, DOE-AL, and KAFB are contingent upon the U.S. Congress making and the U.S. President authorizing the necessary appropriations required for the continued performance of the Parties obligations under this Agreement. In case such appropriations are not made, Western and DOE-AL hereby release each other from its obligations and from all liability due to such appropriations not materializing.

17. AUTHORITY

The person executing this Agreement on behalf of any Party is duly authorized to enter into this Agreement on behalf of and to bind the Party represented.

IN WITNESS WHEREOF, the Parties have hereto caused this Intra-agency Agreement to be duly executed the day and year first above written.

WESTERN AREA POWER ADMINISTRATION

By: 

CRSP Manager
CRSP Customer Service Center
Western Area Power Administration
P.O. Box 11606
Salt Lake City, UT 84147-0606

U.S. DEPARTMENT OF ENERGY
ALBUQUERQUE OPERATIONS OFFICE

By: 

Michael G. Loera
Contracting Officer
Contracts and Procurement Division
P. O. Box 5400
Albuquerque, NM 87185-5400

EXHIBIT A
POINTS OF DELIVERY, AND VOLTAGES

1. This Exhibit A to be effective under and as part of Intra-agency Agreement No. 98-SLC-0357, hereinafter called the Agreement, shall become effective with the Agreement, and shall remain in effect until superseded by another Exhibit A in accordance with the provisions of the Agreement; Provided, That this Exhibit A or any superseding Exhibit A shall be terminated by the expiration or termination of the Agreement.
2. Points of Delivery and Voltages: Energy will be delivered pursuant to the Agreement at the point(s) of delivery and voltages designated below.

Point(s) of Delivery

PNM Sandia Switching Station, Four 46 kV Feeders

PNM Sandia Switching Station, One 115 kV Feeder

PNM Gibson Blvd Metering Station, One 46 kV Feeder (Normally Open)

PNM Kirtland Switching Station, One 115 kV Feeder

EXHIBIT B

EQUIPMENT INSTALLATION AND ASSOCIATED COSTS

1. This Exhibit B to be effective under and as part of Intra-agency Agreement No. 98-SLC-0357, hereinafter called the Agreement, shall become effective with the Agreement, and shall remain in effect until superseded by another Exhibit B in accordance with the provisions of the Agreement; Provided, That this Exhibit B or any superseding Exhibit B shall be terminated by the expiration or termination of the Agreement.
2. Pursuant to Section 7, Western will install, the following equipment and associated costs:

<u>Equipment Type</u>	<u>Estimated Cost</u>
Communications	*
Digital Telemetry	*
Supervisory Control and Data Acquisition	*
Installation	**
Subtotal Equipment Acquisition & Installation	\$175,000
Administrative Expenses	<u>\$ 25,000***</u>
Total	\$200,000****

*Estimated Cost to be determined upon completion of Western's review of the KAFB infrastructure.

**The installation costs include Western's labor, travel, other direct costs and indirect costs.

***Includes the estimated pre-award power supply activities, i.e., preparing request for proposals, conducting proposal evaluation, etc. The estimated post-award activities will be determined.

****Not-to-Exceed Amount

Note: Exhibit B will be revised, if applicable, when Western has determined if additional equipment is needed to provide the services in this Agreement.

EXHIBIT C
ESTIMATED REQUIREMENTS
AND
ESTIMATED TOTAL PRICE

1. This Exhibit C to be effective under and as part of Intra-agency Agreement No.98-SLC-0357, hereinafter called the Agreement, shall become effective with the Agreement, and shall remain in effect until superseded by another Exhibit C in accordance with the provisions of the Agreement; Provided, That this Exhibit C or any superseding Exhibit C shall be terminated by the expiration or termination of the Agreement.
2. Pursuant to Section 9 of this Agreement the table on the following page identifies KAFB's Mid-Range Peak Demand and Annual Energy estimated requirements along with the estimated cost (transmission, energy, transmission related ancillary services, and Set Up Costs (equipment and administrative expenses) associated with Western providing the services required herein. This table breaks down such requirements and estimated cost for each year of the Agreement's initial 5-year term, and for the second 5-year term, if extended.

Note Reference:				MID RANGE				
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
	Interagency Agreement	Peak Demand (kW)	Annual Energy (GWh)	Trans-mission (\$1,000)	Energy Cost \$/MWH	Trans. Related Ancillary Services (\$1,000)	Set Up Costs (\$1,000)	Total Cost (\$1,000)
Fiscal Year	Year							
2000	1	64,184	358.15	\$1,594	26.8	\$9,598	\$100	\$325
2001	2	64,687	360.96	\$1,607	27.34	\$9,869	101	125
2002	3	65,071	363.11	\$1,616	27.88	\$10,124	102	125
2003	4	65,568	365.88	\$1,629	28.44	\$10,406	103	125
2004	5	65,953	368.03	\$1,638	29.01	\$10,677	104	125
	Subtotal		1,816	\$ 8,085		\$ 50,673	\$ 510	\$ 825
2005	6	66,815	372.84	\$1,660	29.01	\$10,816	104	125
2006	7	66,977	373.74	\$1,664	29.01	\$10,842	104	125
2007	8	67,349	375.82	\$1,673	29.01	\$10,903	104	125
2008	9	67,512	376.73	\$1,677	29.01	\$10,929	104	125
2009	10	67,675	377.64	\$1,681	29.01	\$10,955	104	125
	Subtotal		1,877	\$ 8,354		\$ 54,445	\$ 520	\$ 625
	Total		3,693	\$ 16,439		\$ 105,118	\$ 1,030	\$ 1,450
								\$ 124,037

- (1): Peak Demand (kW) is based on known loads plus projected facility requirements and background growth, minus energy conservation measures. The estimates listed are based on the FY1999 Integrated Resource Plan provided to Public Service Co. of NM.
- (2): Annual Energy (GWh) is based on Projected Load Factor.
- (3): Transmission Costs is arrived at by taking \$2.07/kW month [the estimated transmission rate] multiplying peak demand times 12 [months]. \$2.07 rate includes Energy and Energy-Related Ancillary Service Costs. The rates utilized are our best estimates at this time based on discussions with Western.
- (4): Rate estimated based on latest available estimates provided by Western for securing Energy and energy related ancillary services purchases.
- (5): Energy Cost \$/MWH times Annual Energy (GWh).
- (6): Based on the PNM OAT for such services.
- (7): Year 1 estimate includes \$25,000 for Western Administrative Expenses associated with energy contract pre-award activities, \$175,000 for equipment acquisition and installation, and \$125,000 for post-award energy contract and IA Western Administrative Expenses. Years 2 - 10 \$125,000 estimate is for Western Administrative Expenses associated with post-award energy contract and IA administration.
- (8): Transmission p/kw-mo plus Energy Cost, plus Trans. Ancillary Services, plus Set Up costs

Intra-agency Agreement No. 98-SLC-0357

WESTERN'S GENERAL POWER CONTRACT PROVISIONS

Effective July 10, 1998

WESTERN AREA POWER ADMINISTRATION GENERAL POWER CONTRACT PROVISIONS

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Effective July 10, 1998

WESTERN AREA POWER ADMINISTRATION
GENERAL POWER CONTRACT PROVISIONS

I. **APPLICABILITY.**

1. Applicability.

1.1. These General Power Contract Provisions shall be a part of the contract to which they are attached. These provisions set forth general conditions applicable to the contract. Specific terms set forth in the contract have precedence over any provision herein.

1.2. If the Contractor has member utilities which are either directly or indirectly receiving benefits from the contract, then the Contractor shall require such members to comply with Provisions 10, 17, 18, 19, 29, 30, 36, 42, 43, and 44 of these General Power Contract Provisions.

II. **DELIVERY OF SERVICE PROVISIONS.**

2. Character of Service.

Electric energy supplied or transmitted under the contract will be three-phase, alternating current, at a nominal frequency of sixty (60) hertz (cycles per second).

3. Use of Capacity or Energy in Excess of Contract Obligation.

The Contractor is not entitled to use Federal power, energy, or capacity in amounts greater than the Western contract delivery obligation in effect for each type of service provided for in the contract except with the approval of Western. Unauthorized overruns of contract delivery obligations shall be subject to charges specified in the contract or the applicable rate schedules. Overruns shall not establish any continuing right thereto and the Contractor shall cease any overruns when requested by Western, or in the case of authorized overruns, when the approval expires, whichever occurs first. Nothing in the contract shall obligate Western to increase any delivery obligation. If additional power, energy, or capacity is not available from Western, the responsibility for securing additional power, energy, or capacity shall rest wholly with the Contractor.

4. Continuity of Service.

Electric service will be supplied or transmitted continuously except for: (1) fluctuations, interruptions, or reductions due to uncontrollable forces, as defined in Provision 34 (Uncontrollable Forces) herein, (2) fluctuations, interruptions, or reductions due to operation of devices installed for power system protection; and (3) temporary fluctuations, interruptions, or reductions, which, in the opinion of the party supplying the service, are necessary or desirable for the purposes of maintenance, repairs, replacements, installation of equipment, or investigation and inspection. The party supplying service, except in case of emergency, will give the party to whom service is being provided reasonable advance notice of such temporary interruptions or reductions and will remove the cause thereof with diligence.

5. Multiple Points of Delivery.

When electric service is supplied at or transmitted to two or more points of delivery under the same rate schedule, said rate schedule shall apply separately to the service supplied at or transmitted to each point of delivery; Provided, That where the meter readings are considered separately, and during abnormal conditions, the Contractor's system is interconnected between points of delivery such that duplication of metered power is possible, the meter readings at each affected point of delivery will be adjusted to compensate for duplication of power demand recorded by meters at alternate points of delivery due to abnormal conditions which are beyond the Contractor's control or temporary conditions caused by scheduled outages.

6. Metering.

6.1. The total electric power and energy supplied or transmitted under the contract will be measured by metering equipment to be furnished and maintained by Western, a designated representative of Western, or by the Contractor. The Contractor shall ensure that metering equipment furnished and maintained by the Contractor or another power supplier, as provided in the contract, meets the metering standards of Western if such metering equipment will be used for billing or other accounting purposes by Western.

6.2. Meters shall be sealed and the seals shall be broken only upon occasions when the meters are to be inspected, tested, or adjusted, and representatives of the interested parties shall be afforded reasonable opportunity to be present upon such occasions. Metering equipment shall be inspected and tested each year by the party responsible for meter maintenance, unless another test interval is agreed upon by the parties. Meters shall also be tested at any reasonable time upon request by either party hereto, a supplemental power supplier, transmission agent, or control area operator. Any metering equipment found to be damaged, defective, or inaccurate shall be repaired and readjusted or replaced by the party responsible for meter maintenance. Meters found with broken seals shall be tested for tampering and, if appropriate, meter readings shall be adjusted by Western pursuant to Provision 6.3 below.

6.3. Except as otherwise provided in Provision 6.4 hereof, should any meter that is needed by Western for billing or other accounting purposes fail to register accurately, the electric power and energy supplied or transmitted during such period of failure to register accurately, shall, for billing purposes, be estimated by Western from the best available information.

6.4. If acceptable inspections and tests of a meter needed by Western for billing or other accounting purposes disclose an error exceeding two percent (2%), then correction based upon the inaccuracy found shall be made of the records of services furnished during the period that such inaccuracy has existed as determined by Western; Provided, That if such period of inaccuracy cannot be determined, correction shall be made for the period beginning with the monthly billing period immediately preceding the billing period during which the test was made.

6.5. Any correction in billing resulting from correction in meter records shall normally be made in the next monthly bill rendered by Western to the Contractor. Payment of such bill shall constitute full adjustment of any claim between the parties hereto arising out of inaccuracy of metering equipment.

7. Existence of Transmission Service Contract.

If the contract provides for Western to furnish services using the facilities of a third party, the obligation of Western shall be subject to and contingent upon the existence of a transmission service contract granting Western rights to use such facilities. If Western acquires or constructs facilities which would enable it to furnish direct service to the Contractor, Western, at its option, may furnish service over its own facilities.

8. Conditions of Transmission Service.

8.1. When the electric service under the contract is furnished by Western over the facilities of others by virtue of a transmission service arrangement, the power and energy will be furnished at the voltage available and under the conditions which exist from time to time on the transmission system over which the service is supplied.

8.2. Unless otherwise provided in the contract or attached rate schedule, the Contractor shall maintain a power factor at each point of delivery from Western's transmission agent as required by the transmission agent.

8.3. Western will endeavor to inform the Contractor from time to time of any changes contemplated on the system over which the service is supplied, but the costs of any changes made necessary in the Contractor's system because of changes or conditions on the system over which the service is supplied shall not be a charge against or a liability of Western.

8.4. If the Contractor, because of changes or conditions on the system over which service under the contract is supplied, is required to make changes on its system at its own expense in order to continue receiving service under the contract, then the Contractor may terminate service under the contract upon not less than sixty (60) days written notice given to Western prior to making such changes, but not thereafter.

8.5. If Western notifies the Contractor that electric service provided for under the contract cannot be delivered to the Contractor because of an insufficiency of capacity available to Western in the facilities of others over which service under the contract is supplied, then the Contractor may terminate service under the contract upon not less than sixty (60) days written notice given to Western prior to the date on which said capacity ceases to be available to Western, but not thereafter.

9. Multiple Points of Delivery Involving Direct and Indirect Deliveries.

When Western has provided line and substation capacity under the contract for the purpose of delivering electric service directly to the Contractor at specified direct points of delivery and also has agreed to absorb transmission service allowance or discounts for deliveries of energy over other system(s) to indirect points of delivery and the Contractor shifts any of its load served under the contract from direct delivery to indirect delivery, Western will not absorb the transmission service costs on such shifted load until the unused capacity, as determined solely by Western, available at the direct delivery points affected is fully utilized.

10. Construction, Operation, and Maintenance of Contractor's Power System.

The Contractor shall, and, if applicable, shall require each of its members or transmission agents to construct, operate, and maintain its power system in a manner which, as determined by Western, will not interfere with the operation of the system of Western or its transmission agents over which electric services are furnished to the Contractor under the contract, and in a manner which will coordinate with the protective relaying and other protective arrangements of the system(s) of Western or Western's transmission agents. Western may reduce or discontinue furnishing services to the Contractor if, after notice by Western, the Contractor fails or refuses to make such changes as may be necessary to eliminate an unsatisfactory condition on the Contractor's power system which is determined by Western to interfere significantly under current or probable conditions with any service supplied from the power system of Western or from the power system of a transmission agent of Western. Such a reduction or discontinuance of service will not relieve the Contractor of liability for any minimum charges provided for in the contract during the time said services are reduced or discontinued. Nothing in this Provision shall be construed to render Western liable in any manner for any claims, demands, costs, losses, causes of action, damages, or liability of any kind or nature arising out of or resulting from the construction, operation, or maintenance of the Contractor's power system.

III. RATES, BILLING, AND PAYMENT PROVISIONS.

11. Change of Rates.

Rates applicable under the contract shall be subject to change by Western in accordance with appropriate rate adjustment procedures. If at any time the United States promulgates a rate changing a rate then in effect under the contract, it will promptly notify the Contractor thereof. Rates shall become effective as to the contract as of the effective date of such rate. The Contractor, by written notice to Western within ninety (90) days after the effective date of a rate change, may elect to terminate the service billed by Western under the new rate. Said termination shall be effective on the last day of the billing period requested by the Contractor not later than two (2) years after the effective date of the new rate. Service provided by Western shall be paid for at the new rate regardless of whether the Contractor exercises the option to terminate service.

12. Minimum Seasonal or Annual Capacity Charge.

When the rate in effect under the contract provides for a minimum seasonal or annual capacity charge, a statement of the minimum capacity charge due, if any, shall be included in the bill rendered for service for the last billing period of the service season or contract year as appropriate, adjusted for increases or decreases in the contract rate of delivery and for the number of billing periods during the year or season in which service is not provided. Where multiple points of delivery are involved and the contract rate of delivery is stated to be a maximum aggregate rate of delivery for all points, in determining the minimum seasonal or annual capacity charge due, if any, the monthly capacity charges at the individual points of delivery shall be added together.

13. Billing and Payment.

13.1. Western will issue bills to the Contractor for service furnished during the preceding month within ten (10) days after the end of the billing period.

13.2. If Western is unable to issue a timely monthly bill, it may elect to render an estimated bill for that month to be followed by the final bill. Such estimated bill shall be subject to the same payment provisions as a final bill.

13.3. Payments are due and payable by the Contractor before the close of business on the twentieth (20th) calendar day after the date of issuance of each bill or the next business day thereafter if said day is a Saturday, Sunday, or Federal holiday. Bills shall be considered paid when payment is received by Western; Provided, That payments received by mail will be accepted as timely and without assessment of the charge provided for in Provision 14 (Nonpayment of Bills in Full When Due) if a United States Post Office first class mail postmark indicates the payment was mailed at least three (3) calendar days before the due date.

13.4. Whenever the parties agree, payments due Western by the Contractor may be offset against payments due the Contractor by Western for the sale or exchange of electric power and energy, use of transmission facilities, operation and maintenance of electric facilities, and other services. For services included in net billing procedures, payments due one party in any month shall be offset against payments due the other party in such month, and the resulting net balance shall be paid to the party in whose favor such balance exists. The parties shall exchange such reports and information that either party requires for billing purposes. Net billing shall not be used for any amounts due which are in dispute.

14. Nonpayment of Bills in Full When Due.

14.1. Bills not paid in full by the Contractor by the due date specified in Provision 13 (Billing and Payment) hereof shall bear a charge of five hundredths percent (0.05%) of the principal sum unpaid for each day payment is delinquent, to be added until the amount due is paid in full. Western will also assess a fee of twenty-five dollars (\$25.00) for processing a late payment. Payments received will first be applied to the charges for late payment assessed on the principal and then to payment of the principal.

14.2. Western shall have the right, upon not less than fifteen (15) days advance written notice, to discontinue furnishing the services specified in the contract for nonpayment of bills in full when due, and to refuse to resume such services so long as any part of the amount due remains unpaid. Such a discontinuance of service will not relieve the Contractor of liability for minimum charges during the time service is so discontinued. The rights reserved to Western herein shall be in addition to all other remedies available to Western either by law or in equity, for the breach of any of the terms hereof.

15. Adjustments for Fractional Billing Period.

For a fractional part of a billing period at the beginning or end of electric service, at the beginning or end of irrigation pumping service each year, a fractional billing period under a new rate schedule, and for fractional periods due to withdrawals of electric services, the demand or capacity charge and minimum charges shall each be proportionately adjusted in the ratio that the number of hours that electric service is available to the Contractor in such fractional billing period bears to the total number of hours in the billing period involved.

16. Adjustments for Curtailments to Firm Service.

16.1. Billing adjustments will be made if firm electric service is interrupted or reduced because of conditions on the power system of the United States for periods of 1 hour or longer in duration each. Billing adjustments will not be made when such curtailment of electric service is due to a request by the Contractor or a discontinuance of electric service by Western pursuant to Provision 14 (Nonpayment of Bills In Full When Due). For purposes of billing adjustments under this Provision, the term power system of the United States shall include transmission facilities used under contract but not owned by the United States.

16.2. The total number of hours of curtailed firm electric service in any billing period shall be determined by adding: (1) the sum of the number of hours of interrupted electric service to (2) the product, of each reduction, of: the number of hours reduced electric service and the percentage by which electric service was reduced below the delivery obligation of Western at the time of each said reduction of electric service. The demand or capacity charge and applicable minimum charges shall each be proportionately adjusted in the ratio that the total number of hours of electric service determined to have been curtailed bears to the total number of hours in the billing period involved.

16.3. The Contractor shall make written claim within thirty (30) days after receiving the monthly bill, for adjustment on account of any curtailment of firm electric service, for periods of 1 hour or longer in duration each, alleged to have occurred that is not reflected in said bill. Failure to make such written claim, within said thirty-day (30-day) period, shall constitute a waiver of said claim. All curtailments of electric service, which are due to conditions on the power system of the United States, shall be subject to the terms of this Provision; Provided, That withdrawal of power and energy under the contract shall not be considered a curtailment of electric service.

IV. POWER SALES PROVISIONS.

17. Resale of Firm Electric Service (Wholesale Sales for Resale).

The Contractor shall not sell any firm electric power or energy supplied under the contract to any electric utility customer of the Contractor for resale by that utility customer; Provided, That the Contractor may sell the electric power and energy supplied under the contract to its members on condition that said members not sell any of said power and energy to any customer of the member for resale by that customer.

18. Distribution Principles.

The Contractor agrees that the benefits of firm electric power or energy supplied under the contract shall be made available to its consumers at rates that are established at the lowest possible level consistent with sound business principles, and that these rates will be established in an open and public manner. The Contractor further agrees that it will identify the costs of firm electric power or energy supplied under the contract and power from other sources to its consumers upon request. The Contractor will demonstrate compliance with the requirements of this Provision to Western upon request.

19. Contract Subject to Colorado River Compact.

Where the energy sold under the contract is generated from waters of the Colorado River system, the contract is made upon the express condition and with the express covenant that all rights under the contract shall be subject to and controlled by the Colorado River Compact approved by Section 13 (a) of the Boulder Canyon Project Act of December 21, 1928, (45 Stat. 1057) and the parties to the contract shall observe and be subject to and controlled by said Colorado River Compact in the construction, management, and operation of the dams, reservoirs, and powerplants from which electrical energy is to be furnished by Western to the Contractor under the contract, and in the storage, diversion, delivery, and use of water for the generation of electrical energy to be delivered by Western to the Contractor under the contract.

V. FACILITIES PROVISIONS.

20. Design Approval.

All facilities, construction, and installation by the Contractor pursuant to the contract shall be subject to the approval of Western. Facilities interconnections shall normally conform to Western's current "General Requirements for Interconnection," in effect upon the signing of the contract document providing for each interconnection, copies of which are available from Western. At least ninety (90) days, unless otherwise agreed, prior to the date the Contractor proposes to commence construction or to incur an obligation to purchase facilities to be installed pursuant to the contract, whichever date is the earlier, the Contractor shall submit, for the approval of Western, detailed designs, drawings, and specifications of the facilities the Contractor proposes to purchase, construct, and install. The Contractor assumes all risks for construction commenced or obligations to purchase facilities incurred prior to receipt of approval from Western. Western review and approval of designs and construction work in no way implies that Western is certifying that the designs meet the Contractor's needs.

21. Inspection and Acceptance.

Western shall have the right to inspect the materials and work furnished by the Contractor, its agents, employees, and subcontractors pursuant to the contract. Such inspections shall be at reasonable times at the work site. Any materials or work that Western determines is defective or not in accordance with designs, drawings, and specifications, as approved by Western, shall be replaced or modified, as directed by Western, at the sole expense of the Contractor before the new facilities are energized.

22. As-Built Drawings.

Within a reasonable time, as determined by Western, after the completion of construction and installation of facilities pursuant to the contract, the Contractor shall submit to Western marked as-built prints of all Western drawings affected by changes made pursuant to the contract and reproducible drawings the Contractor has prepared showing facilities of Western. The Contractor's drawings of Western facilities shall use drawing title blocks, drawing numbers, and shall be prepared in accordance with drafting standards all as approved by Western. Western may prepare, revise, or complete said drawings and bill the Contractor if the Contractor fails to provide such drawings to Western within a reasonable time as determined by Western.

23. Equipment Ownership Markers.

23.1. The Contractor shall identify all movable equipment and, to the extent agreed upon by the parties, all other salvageable facilities constructed or installed on the United States right-of-way or in Western substations pursuant to the contract which are owned by the Contractor, by permanently affixing thereto suitable markers clearly identifying the Contractor as the owner of said equipment and facilities.

23.2. If requested by the Contractor, Western shall identify all movable equipment and, to the extent agreed upon by the parties, all other salvageable facilities constructed or installed on the Contractor's right-of-way or in the Contractor's substations pursuant to the contract which are owned by the United States, by permanently affixing thereto suitable markers clearly identifying the United States as the owner of said equipment and facilities.

24. Third-Party Use of Facilities.

The Contractor shall notify Western of any proposed system change relating to the facilities governed by the contract or allowing third-party use of the facilities governed by the contract. If Western notifies the Contractor that said system change will, as solely determined by Western, adversely affect the operation of Western's system the Contractor shall, at no cost to Western, provide a solution to said adverse effect acceptable to Western.

25. Changes to Western Control Facilities.

If at any time during the term of the contract, Western determines that changes or additions to control, relay, or communications facilities are necessary to maintain the reliability or control of Western's transmission system, and said changes or additions are entirely or partially required because of the Contractor's equipment installed under the contract, such changes or additions shall, after consultation with the Contractor, be made by Western with all costs or a proportionate share of all costs, as determined by Western, to be paid by the Contractor. Western shall notify the Contractor in writing of the necessary changes or additions and the estimated costs to be paid by the Contractor. If the Contractor fails to pay its share of said estimated costs, Western shall have the right, after giving sixty (60) days' written notice to the Contractor, to terminate the applicable facility installation provisions to the contract and require the removal of the Contractor's facilities.

26. Modification of Western Facilities.

Western reserves the right, at any time, to modify its facilities. Western shall keep the Contractor informed of all planned modifications to Western facilities which impact the facilities installation pursuant to the contract. Western shall permit the Contractor to change or modify its facilities, in a manner satisfactory to and at no cost or expense to Western, to retain the facilities interconnection pursuant to the contract. At the Contractor's option, Western shall cooperate with the Contractor in planning alternate arrangements for service which shall be implemented at no cost or expense to Western. The Contractor and Western shall modify the contract, as necessary, to conform to the new facilities arrangements.

27. Transmission Rights.

If the contract involves an installation which sectionalizes a Western transmission line, the Contractor hereby agrees to provide a transmission path to Western across such sectionalizing facilities at no cost or expense to Western. Said transmission path shall be at least equal, in terms of capacity and reliability, to the path in the Western transmission line prior to the installation pursuant to the contract.

28. Construction and Safety Procedures.

28.1. The Contractor hereby acknowledges that it is aware of the hazards inherent in high-voltage electric lines and substations, and hereby assumes full responsibility at all times for the adoption and use of necessary safety measures required to prevent accidental harm to personnel engaged in the construction, inspection, testing, operation, maintenance, replacement, or removal activities of the Contractor pursuant to the contract. The Contractor and the authorized employees, agents, and subcontractors of the Contractor shall comply with all applicable safety laws and building and construction codes, including the provisions of Western's current "Power Systems Safety Manual," "Construction, Safety, and Health Standards," and "Power System Clearance Procedures" in effect upon the signing of the contract; Except, That, in lieu of the safety program required herein, the Contractor may provide sufficient information to demonstrate that the Contractor's safety program is satisfactory to the United States.

28.2. The Contractor and its authorized employees, agents, and subcontractors shall familiarize themselves with the location and character of all the transmission facilities of Western and interconnections of others relating to the work performed by the Contractor under the contract. Prior to starting any construction, installation, or removal work, the Contractor shall submit a plan of procedure to Western which shall indicate the sequence and method of performing the work in a safe manner. No work shall be performed by the Contractor, its employees, agents, or subcontractors until written authorization to proceed is obtained from Western.

28.3. At all times when the Contractor, its employees, agents, or subcontractors are performing activities of any type pursuant to the contract, such activities shall be under supervision of a qualified employee, agent, or subcontractor of the Contractor who shall be authorized to represent the Contractor in all matters pertaining to the activity being performed. The Contractor and Western will keep each other informed of the names of their designated representatives at the site.

28.4. Upon completion of its work, the Contractor shall remove from the vicinity of the right-of-way of the United States all buildings, rubbish, used materials, concrete forms, and other like material belonging to the Contractor or used under the Contractor's direction, and in the event of failure to do so the same may be removed by Western at the expense of the Contractor.

28.5. In the event the Contractor, its employees, agents, or subcontractors fail to comply with any requirement of this Provision, or Provision 21 (Inspection and Acceptance) herein, Western or an authorized representative may issue an order to stop all or any part of the work until such time as the Contractor demonstrates compliance with the provision at issue. The Contractor, its employees, agents, or subcontractors shall make no claim for compensation or damages resulting from such work stoppage.

29. Environmental Compliance.

Facilities installed under the contract by any party shall be constructed, operated, maintained, replaced, and removed subject to compliance with laws, executive orders, and regulations applicable to that party, including the National Environmental Policy Act of 1969, as amended, 36 CFR 800, and the Archeological Resources Protection Act of 1979.

30. Responsibility for Hazardous Materials.

When either party owns equipment containing hazardous material located on the other party's substation, switchyard, right-of-way, or other property, the equipment owner shall be responsible for all activities related to hazardous materials in such equipment that are necessary to meet the requirements of the Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*), the Solid Waste Disposal Act and the Resource Conservation Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 *et seq.*), and the regulations implementing these laws, as they may be amended, and any other existing or subsequent applicable Federal or state laws and regulations. Each party shall label its equipment containing hazardous material in accordance with appropriate laws and regulations. If the party owning the equipment does not perform activities required under appropriate laws and regulations within the time frame specified therein, the other party may perform or cause to be performed the required activities after notice to and at the sole expense of the party owning the equipment.

VI. OTHER PROVISIONS.

31. Authorized Representatives of the Parties.

Each party to the contract, by written notice to the other, shall designate the representative(s) who is (are) authorized to act in its behalf with respect to those matters contained in the contract which are the functions and responsibilities of the authorized representatives of the parties. Each party may change the designation of its authorized representative(s) upon oral notice given to the other, confirmed promptly by written notice.

32. Effect of Section Headings.

Section headings or Provision titles appearing in the contract or these General Power Contract Provisions are inserted for convenience only and shall not be construed as interpretations of text.

33. Operating Guidelines and Procedures.

The parties to the contract may agree upon and put into effect from time to time, such other written guidelines and procedures as may be required in order to establish the methods of operation of the power system to be followed in the performance of the contract.

34. Uncontrollable Forces.

Neither party to the contract shall be considered to be in default in performance of any of its obligations under the contract, except to make payment as specified in Provision 13 (Billing and Payment) herein, when a failure of performance shall be due to an uncontrollable force. The term "uncontrollable force" means any cause beyond the control of the party affected, including but not restricted to, failure of or threat of failure of facilities, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority and action or nonaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority, which by exercise of due diligence such party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Nothing contained herein shall be construed to require a party to settle any strike or labor dispute in which it may be involved. Either party rendered unable to fulfill any of its obligations under the contract by reason of an uncontrollable force shall give prompt written notice of such fact to the other party and shall exercise due diligence to remove such inability with all reasonable dispatch.

35. Liability.

35.1. The Contractor hereby agrees to indemnify and hold harmless the United States, its employees, agents, or contractors, from any loss or damage and from any liability on account of personal injury, death, or property damage, or claims for personal injury, death, or property damage of any nature whatsoever and by whomsoever made arising out of the Contractors', its employees', agents, or subcontractors', construction, operation, maintenance, or replacement activities under the contract.

35.2. The United States is liable only for negligence on the part of its officers and employees in accordance with the Federal Tort Claims Act, as amended.

36. Cooperation of Contracting Parties.

If, in the operation and maintenance of their respective power systems or electrical equipment and the utilization thereof for the purposes of the contract, it becomes necessary by reason of any emergency or extraordinary condition for either party to request the other to furnish personnel, materials, tools, and equipment for the accomplishment thereof, the party so requested shall cooperate with the other and render such assistance as the party so requested may determine to be available. The party making such request, upon receipt of properly itemized bills from the other party, shall reimburse the party rendering such assistance for all costs properly and reasonably incurred by it in such performance, including administrative and general expenses, such costs to be determined on the basis of current charges or rates used in its own operations by the party rendering assistance. Issuance and payment of bills for services provided by Western shall be in accordance with Provisions 13 (Billing and Payment) and 14 (Nonpayment of Bills in Full When Due) herein. Western shall pay bills issued by the Contractor for services provided as soon as the necessary vouchers can be prepared which shall normally be within twenty (20) days.

37. Transfer of Interest in Contract.

37.1. No voluntary transfer of the contract or of the rights of the Contractor under the contract shall be made without the written approval of the Administrator of Western; Provided, That if the Contractor operates a project financed in whole or in part by the Rural Utilities Service, the Contractor may transfer or assign its interest in the contract to the Rural Utilities Service or any other department or agency of the Federal Government without such written approval; Provided further, That any successor to or assignee of the rights of the Contractor, whether by voluntary transfer, judicial sale, foreclosure sale, or otherwise, shall be subject to all the provisions and conditions of the contract to the same extent as though such successor or assignee were the original Contractor under the contract; and, Provided

further, That the execution of a mortgage or trust deed, or judicial or foreclosure sales made thereunder, shall not be deemed voluntary transfers within the meaning of this Provision.

* 37.2. Any successor to Western shall be subject to all the provisions and conditions of the contract to the same extent as though such successor were an original signatory to the contract.

38. Waivers.

Any waivers at any time by either party to the contract of its rights with respect to a default or any other matter arising under or in connection with the contract shall not be deemed a waiver with respect to any subsequent default or matter.

39. Notices.

Any notice, demand, or request required by the contract or these Provisions to be in writing shall be considered properly given when delivered in person, or sent by either registered or certified mail, postage prepaid, or prepaid telegram addressed to each party's authorized representative at the principal offices of the party. The designation of the person to be notified may be changed at any time by similar notice.

40. Contingent Upon Appropriations.

Where activities provided for in the contract extend beyond the current fiscal year, continued expenditures by the United States are contingent upon Congress making the necessary appropriations required for the continued performance of the United States obligations under the contract. In case such appropriation is not made, the Contractor hereby releases the United States from its contractual obligations and from all liability due to the failure of Congress to make such appropriation.

41. Covenant Against Contingent Fees.

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, Western shall have the right to annul the contract without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

42. Contract Work Hours and Safety Standards.

The contract, to the extent that it is of a character specified in Section 103 of the Contract Work Hours and Safety Standards Act (Act), 40 U.S.C.A. (329 (1986)), is subject to the provisions of the Act, 40 U.S.C.A. (327-333 (1986)), and to regulations promulgated by the Secretary of Labor pursuant to the Act.

43. Equal Opportunity Employment Practices.

Section 202 of Executive Order No. 11246, 30 Fed. Reg. 12319 (1965), as amended by Executive Order No. 12086, 43 Fed. Reg. 46501 (1978), which provides, among other things, that the Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, is incorporated by reference in the contract.

44. Use of Convict Labor.

The Contractor agrees not to employ any person undergoing sentence of imprisonment in performing the contract except as provided by 18 U.S.C. 4082 (c)(2) and Executive Order 11755, December 29, 1973.